

## 48A C.J.S. Judges § 233

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### A. In General

§ 233. Proceedings in which claim of disqualification available

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  39

**Generally, the question of disqualification of a judge may be raised in such actions or proceedings as come within the scope of statutes providing for a change of judge.**

Generally, the question of disqualification of a judge may be raised in such actions or proceedings as come within the scope of statutes providing for a change of judge,<sup>1</sup> as for example, statutes making provision therefor in civil actions.<sup>2</sup> Under a rule providing for the disqualification of a circuit judge in any civil suit, "civil suit" means a proceeding by which the rights of private individuals are protected or enforced.<sup>3</sup>

Further, under various statutes, the question of disqualification may be raised in habeas corpus proceedings,<sup>4</sup> in juvenile court proceedings,<sup>5</sup> and in other particular or special proceedings.<sup>6</sup>

After an original case has gone to final judgment, a statute governing the disqualification of a prejudiced judge becomes applicable to any subsequent proceeding in the original case.<sup>7</sup>

***Criminal proceedings.***

Ordinarily, a judge may be disqualified in criminal cases.<sup>8</sup> Thus, where a judge becomes intimately involved in the presentence fact-gathering process, the judge should disqualify him- or herself from sentencing the defendant.<sup>9</sup>

***Divorce proceedings.***

There is authority that a judge may be disqualified in divorce proceedings<sup>10</sup> as, for instance, in proceedings for the modification of the decree.<sup>11</sup> However, there is also authority that a judge may not be disqualified in a proceeding to modify a divorce judgment with respect to alimony, custody, or minor children as applications to modify any aspect of a divorce judgment, and particularly the custody of children or parental visitation rights, are more satisfactorily disposed of by the trial court in view of its contact with the parties throughout the litigation.<sup>12</sup>

***Probate proceedings.***

A judge may usually be disqualified in proceedings pending in probate courts.<sup>13</sup>

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**Footnotes**

- 1 Ark.—*State v. George*, 250 Ark. 968, 470 S.W.2d 593 (1971).
- 2 Mont.—*State ex rel. Greely v. District Court of Fourth Judicial Dist.*, 180 Mont. 317, 590 P.2d 1104 (1979).
- 3 Mo.—*In re Boeving's Estate*, 388 S.W.2d 40 (Mo. Ct. App. 1965).
- 4 Ind.—*Dowd v. Harmon*, 229 Ind. 254, 96 N.E.2d 902 (1951).
- 5 Wash.—*McDaniel v. McDaniel*, 64 Wash. 2d 273, 391 P.2d 191 (1964).  
  
**Statute regarding substitution of judge in criminal case not applying to juvenile matters**  
Wis.—*State ex rel. Mitchell v. Bowman*, 54 Wis. 2d 5, 194 N.W.2d 297 (1972).
- 6 Ind.—*State ex rel. Van Horne v. Sullivan*, 206 Ind. 304, 188 N.E. 672 (1934).  
  
**Limitation to particular agencies**  
Cal.—*San Diego Gas & Elec. Co. v. Lux Land Co.*, 194 Cal. App. 2d 472, 14 Cal. Rptr. 899 (4th Dist. 1961).
- 7 Wash.—*In re Dependency of Hiebert*, 28 Wash. App. 905, 627 P.2d 551 (Div. 3 1981).

- 8 Ind.—State ex rel. Hurt v. Sommer, 233 Ind. 447, 120 N.E.2d 403 (1954).
- Mont.—State ex rel. Greely v. District Court of Fourth Judicial Dist., 180 Mont. 317, 590 P.2d 1104 (1979).
- Disqualification statute because of physical impairment applies to criminal proceeding**
- Cal.—People v. Pratt, 205 Cal. App. 2d 838, 23 Cal. Rptr. 469 (1st Dist. 1962).
- Second change of judge not allowed**
- Ill.—People v. Savage, 102 Ill. App. 2d 88, 243 N.E.2d 702 (1st Dist. 1968).
- 9 Mont.—State v. Stewart, 175 Mont. 286, 573 P.2d 1138 (1977).
- As to grounds for disqualification, see §§ 245 to 297.
- 10 Wash.—In re Dependency of Hiebert, 28 Wash. App. 905, 627 P.2d 551 (Div. 3 1981).
- 11 Idaho—Price v. Featherstone, 64 Idaho 312, 130 P.2d 853, 143 A.L.R. 407 (1942).
- 12 Wis.—Bahr v. Galonski, 80 Wis. 2d 72, 257 N.W.2d 869 (1977).
- Judge not disqualified from dissolution of marriage proceeding**
- Ariz.—Smith v. Smith, 115 Ariz. 299, 564 P.2d 1266 (Ct. App. Div. 1 1977).
- 13 Ariz.—Murray v. Thomas, 80 Ariz. 378, 298 P.2d 795 (1956).